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EICHELBAUM *v.* KLAFF.

June 12, 1919.

[99 S. E. 721.]

**1. Appeal and Error (§ 1002\*)—Verdict—Conclusiveness.**—Finding of jury on conflicting evidence is conclusive on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 621.]

**2. Sales (§ 81 (1)\*—Delivery of Goods—Time as Essence of Contract.**—In contracts for delivery of goods, time is not generally of the essence of the contract.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 24.]

**3. Sales (§ 176 (1)\*—Time for Delivery—“Waiver.”**—Where a contract makes delivery by certain date imperative, the buyer may waive it expressly either in writing or by parol, and impliedly, by inconsistent conduct; a “waiver” occurring where one possessing any right under law or contract, with full knowledge of material facts, does or forbears the doing of something inconsistent with existence of right or of his intention to rely upon it, precluding him from thereafter claiming anything by reason of it.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Waiver. For other cases, see 12 Va.-W. Va. Enc. Dig. 39; 13 Va.-W. Va. Enc. Dig. 637.]

Error to Corporation Court of Danville.

Action by M. Eichelbaum against N. Klaff. Judgment for defendant, and plaintiff brings error. Affirmed.

*A. S. Hester*, of Lynchburg, for plaintiff in error.

*Harris & Harvey*, of Danville, for defendant in error.

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VIRGINIA-WESTERN POWER CO. *v.* COMMONWEALTH ex rel. CITY OF CLIFTON FORGE et al.

June 12, 1919.

[99 S. E. 723.]

**1. Constitutional Law (§ 135\*)—Impairment of Obligation of Contracts—What Is.**—Where municipalities at the time of granting a franchise were vested with unlimited authority to contract with the grantee on the subject of fixing rates which might be charged for services rendered the public during the whole of the franchise period, held, that the rates fixed in the franchise contract are irrevocable under U. S. Const. art. 1, § 10, preventing states from passing any law impairing the obligation of contracts.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 216; 5 Va.-W. Va. Enc. Dig. 55.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.